

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

TYLER K.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2011030443

DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 7, 2011, in Torrance.

Claimant was represented by his mother Ronda K. (Mother).¹ Claimant was not present at the hearing.

Gigi Thompson, Manager Rights Assurance, represented Harbor Regional Center (Service Agency).

The documentary and testimonial evidence described below was received, and argument was heard. The record was closed and the matter was submitted for decision on June 7, 2011.

ISSUE

Should the Service Agency provide funding for claimant to attend the residential camp, Building Bridges Augmentative Communications Camp, for their six-day program in July 2011?

¹ Claimant and his mother are identified by first name and last initial, or by title, to protect their privacy.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits A-I.

Testimonial: Brian Lockhart, program manager; claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 17-year-old male who is an eligible consumer of the Service Agency based on his diagnoses of moderate mental retardation and autism. Claimant lives at home with his parents and younger sister.

2. Claimant is described as a very social, curious and friendly boy. He requires assistance with self-care skills, such as bathing, toileting, brushing his teeth, and dressing. He is much improved with regard to his inappropriate behaviors and touching in public. Claimant and his younger sister, who was diagnosed two years ago with Asperger's, do not interact very much and tend to do their own things. The sister reportedly provokes incidents with claimant, causing him to get angry, frustrated, and aggressive towards her.

3. Claimant uses two augmentative communication devices for his communication. The first is the primary device called Dynavox 2000. The second is a smaller, Palm-pilot version that is lighter and easier to transport. Claimant is continuing to make progress with his verbal communication and his usage of words, although his words may not be easily understood by those not familiar with him. He can understand and say one word, or he can put two to three words together. Claimant prefers to communicate verbally, using his words, rather than using his communication device.

4. Claimant is an eighth grader who attends a special day class at his middle school. He is eligible to receive special education services and supports from the school district on the basis of autism and speech or language impairment. He has a full-day, one-to-one aide at school. Pursuant to his individualized education program (IEP) dated November 9, 2010, the school district provides claimant specialized academic instruction, adapted physical education, language and speech, behavior intervention, counseling and guidance, and occupational therapy (consultation). Claimant spends 82 percent of the school day outside of the regular education environment. In addition, the IEP also provides for claimant to receive extended school year (ESY) services from June 30, 2011 to July 28, 2011, including individual and group language and speech services on a weekly basis.

5. The November 9, 2010, IEP states that claimant "continues to make gradual gains in communicative abilities verbally and with assistive technology. . . . He continues to give good effort, yet overall speech intelligibility is reduced.

[Claimant] continues to prefer to verbalize over using assistive technology, yet he continues to demonstrate progress in his ability to show communicative intent with various forms of technology."

6. In or about February 2011, Mother requested the Service Agency to provide funding for claimant to attend the Building Bridges Augmentative Communications Camp (Building Bridges camp) in July 2011.

7. By letter dated February 22, 2011, the Service Agency notified Mother in writing that it had denied her funding request for the Building Bridges camp. The request was denied based on Welfare and Institutions Code section 4648.5. On March 2, 2011, Mother filed a fair hearing request, on claimant's behalf, to appeal the Service Agency's decision. Jurisdiction in this matter was thus established.

8. (A) The Building Bridges camp is operated by Easter Seals. Mother wants claimant to attend the six-day program held on July 7-12, 2011. The camp's website describes the program as follows: "Building Bridges Camp is designed to give individuals who use AAC/AT² an opportunity to develop their communication skills in a fun, motivating, no-pressure environment. Each year, 40 campers ages 5-17 years, attend a week-long overnight camping experience. Divided into four groups according to age, campers participate in activities designed to support the development of their AAC and AT skills. Building Bridges Camp is a great opportunity for kids to develop increased independence and abilities."

(B) In addition to AAC/AT focused activities, campers have opportunities to participate in swimming, horseback riding, arts and crafts, evening skits, and campfires.

(C) The camp program is designed to pair adults attending the Training Institute (known as Trainers) with a camper throughout the week. Trainers attend activities with the campers in the morning and attend trainings held in computer labs during the afternoon and evening. Trainers are not responsible for the personal care of the campers. There is no indication on the camp website that Trainers or any of the adults responsible for the campers are speech therapists or speech pathologists.

9. Mother contends that the Building Bridges camp is a critical means for ameliorating the psychosocial effects of claimant's developmental disability. Claimant is a very social child. To be part of the community, claimant needs to be understood by others. Mother feels that claimant needs to use his communication device to be understood by people in the community. Those unfamiliar with claimant cannot understand him. Claimant prefers to communicate verbally instead of using his device. Mother believes this is because he has no role models or peers who use

² AAC stands for augmentative alternative communication. AT stands for assistive technology.

communication devices. No other students in his school use communication devices. Claimant does not know any other people who use such devices. Mother contends the Building Bridges camp is the sole opportunity for her son to interact with peers who use communication devices. He does not get such interaction at school, in speech therapy, or in his karate class. Mother notes that only one of claimant's two speech therapists is familiar with his communication device. Mother contends that, to get her son involved in the community, it is critical that he use his communication device. She contends that attending the Building Bridges camp will increase her son's interest and preference to communicate with his device rather than without it. Claimant attended the Building Bridges camp in 2008. Mother, however, does not know how or if attending the camp in 2008 affected his desire to use his communication device.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)³
2. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a)(1).) A regional center must secure services that are effective in meeting the consumer's IPP goals and are cost effective, and to the extent possible, reflect the preferences of the consumer and his or her family. (§§ 4512, subd. (b); 4646.) The services and supports that may be listed in a consumer's IPP include, but are not limited to, speech therapy, recreation, camping, and social skills training. (§ 4512, subd. (b).)
3. In 2009, the Legislature enacted section 4648.5, which suspends the authority of regional centers to purchase certain types of services unless an exemption is granted. Section 4648.5 reads as follows:
 - (a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' [*sic*] authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:
 - (1) Camping services and associated travel expenses.
 - (2) Social recreation activities, except for those activities vendored as community-based day programs.

³ All further statutory references are to the Welfare and Institutions Code.

- (3) Educational services for children three to 17, inclusive, years of age.
- (4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

(b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

4. In this case, claimant's request for the Building Bridges camp fits within the services subject to funding suspension under section 4648.5, subdivision (a), either as a camping service or a social recreation activity. The exemption provided under section 4648.5, subdivision (c), does not apply. It was not established that the six-day program at the Building Bridges camp is a primary or critical means to ameliorate the effects of claimant's developmental disability, or that the service is necessary to enable claimant to continue living at home. Claimant is receiving special education services at school, including individual and group speech therapy, to ameliorate the effects of his developmental disability. The school district is also providing speech therapy during the summer, as an ESY service. Mother's contention that claimant's attendance at the Building Bridges camp will increase his desire to use his communication device was not supported by the evidence. Claimant previously attended the camp in 2008 but there was no evidence that he became more interested in using his communication device after the camp. Claimant's appeal must be denied.

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ORDER

Claimant's appeal is denied. The Service Agency is not required to provide funding for claimant to attend the Building Bridges camp in July 2011.

DATED: June 14, 2011

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.